

Message Text

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ACTION EB-07

INFO OCT-01 EA-06 ISO-00 CIEP-01 DLOS-03 OES-03 COA-01 L-02

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FM AMEMBASSY MANILA

TO SECSTATE WASHDC PRIORITY 8972

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E.O. 11652: N/A

TAGS: EINV, RP

SUBJECT: FOREIGN INVESTMENT IN FISHING

REF: STATE 265945

1. PHILIPPINES HAS LAW COMPARABLE TO U.S. LAW ON COASTWISE TRADE WHICH REQUIRES 75 PERCENT PHILIPPINE OWNERSHIP OF ANY VESSEL ENGAGED IN COASTWISE TRADE. SUPREME COURT DECISION IN 1959 RULED THAT FISHING VESSELS ARE TO BE CONSIDERED ENGAGED IN COASTWISE TRADE.

2. PHILIPPINE FISHERIES ACT, PUBLIC ACT NO. 4003, STATES THAT A LICENSE TO OPERATE FISHING VESSELS MAY BE GRANTED TO: A) NATURAL PERSONS WHOSE COUNTRIES GRANT SIMILAR RIGHTS TO FILIPINOS; B) JURIDICAL PERSONS WHOSE CAPITAL IS 61 PERCENT FILIPINO.

3. PRESIDENTIAL DECREE NO 43 OF NOV 9, 1972, REQUIRES 60 PERCENT FILIPINO EQUITY IN A BUSINESS RELATING TO FISHING INDUSTRY. BOARD OF INVESTMENTS STATES TO POTENTIAL FOREIGN INVESTORS THAT, ALTHOUGH THERE IS NO EXPRESS RE-

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PEAL OF PUBLIC ACT 4003 OWNERSHIP PROVISIONS, IT SEEMS

"A REASONABLE PRESUMPTION" THAT 61 PERCENT REQUIREMENT IS NOW REDUCED TO 60 PERCENT.

4. THERE ARE FOREIGN COMPANIES WHICH ENGAGE IN FISH PROCESSING FOR EXPORT ON BASIS OF INVESTMENT APPROVALS GRANTED BY BOARD OF INVESTMENTS (BOI) PRIOR TO PRESIDENTIAL DECREE 43. THESE COMPANIES ARE ALL BELIEVED TO BE REGISTERED UNDER BOI-ADMINISTERED LAWS WHICH PERMIT 100 PERCENT FOREIGN OWNERSHIP, AND THEIR OPERATIONS HAVE NOT THUS FAR BEEN CALLED INTO QUESTION AS RESULT PD 43.

5. GOP FISHERIES POLICY AND RESPONSIBILITY FOR REGULATING FOREIGN INVESTMENT IN FISHING INDUSTRY IS NOT CENTRALIZED. IN GENERAL, FISHING INDUSTRY IS CONSIDERED BY GOP IN SAME CATEGORY AS FOOD PRODUCTION AND RETAIL TRADE, IN WHICH FILIPINOS GIVEN EXTRA PROTECTION BY LAW, PRESIDENTIAL DECREE AND REGULATION. NEVERTHELESS, PHILIPPINE RESTRICTIONS ON FOREIGN PARTICIPATION IN FISHING APPEAR ON BALANCE TO BE SOMEWHAT LESS RESTRICTIVE THAN THOSE PROPOSED PARA ONE OF REFTTEL.
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